

**SUPREME COURT OF CALIFORNIA
ORAL ARGUMENT CALENDAR
SAN FRANCISCO SESSION
MAY 2 and 3, 2006**

(FIRST AMENDED)

The following cases are placed upon the calendar of the Supreme Court for hearing at its courtroom, located at 350 McAllister Street, Fourth Floor, San Francisco, California, on May 2 and 3, 2006.

TUESDAY, MAY 2, 2006—9:00 A.M.

- (1) S127602 People v. Johnson (Jay)
- (2) S135819 Independent Energy Producers v. McPherson (Finkelstein et al., Real Parties in Interest)
- (3) S130157 People v. Wilson (William Curtis) (*Corrigan, J., not participating; Haerle, J., assigned justice pro tempore*)

1:30 P.M.

- (4) S117816 City of Marina et al. v. Board of Trustees, CSU
- (5) S127874 In re Marriage of Fellows
- (6) S046733 People v. Demetrulias (Gregory) [Automatic Appeal]

WEDNESDAY, MAY 3, 2006—9:00 A.M.

- (7) S124494 Dore v. Arnold Worldwide
(*To be called and continued to the late May or June Calendar*)
- (8) S133464 Michaelis, Montanari & Johnson v. Superior Court of Los Angeles County
(City of Los Angeles, Dept. of Airports et al., Real Parties in Interest)
- (9) S128884 People v. Corpuz (Robert Nicholas) (*Baxter, J., not participating; Hollenhorst, J., assigned justice pro tempore*)
- (10) S128854 People v. Vasquez (Andrew) et al.

1:30 P.M.

- (11) S126233 People v. Warner (Brian Eric)
- (12) S136345 People v. Reed (Vincent)

GEORGE
Chief Justice

If exhibits are to be transmitted to this court, counsel must comply with rule 18(c) of the California Rules of Court.

The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

TUESDAY, May 2, 2006—9:00 A.M.

(1) People v. Johnson (Jay), S127602

#05-212 People v. Johnson (Jay), S127602. (A085450; unpublished opinion; Superior Court of Contra Costa County; 96-0691-4.) On remand from the United States Supreme Court in *Johnson v. California*, No. 04-6964. This case presents the following issue: What is the appropriate remedy for *Wheeler/Batson* error (*People v. Wheeler* (1978) 22 Cal.3d 258; *Batson v. Kentucky* (1986) 476 U.S. 79) in this case—outright reversal of defendant’s conviction or a limited remand to permit the trial court to inquire into the prosecutor’s reasons for removing minority jurors?

(2) Independent Energy Producers v. McPherson (Finkelstein et al., Real Parties in Interest), S135819

#05-169 Independent Energy Producers v. McPherson (Finkelstein et al., Real parties in Interest), S135819. (C050115; __ Cal.App.4th __ [2005 WL 1706487].) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Does article XII, section 5, of the California Constitution preclude the adoption of Proposition 80, an initiative designed to reestablish Public Utility Commission control over electricity providers through the initiative process, rather than by an enactment by the Legislature?

(3) People v. Wilson (William Curtis) (Corrigan, J., not participating; Haerle, J., assigned justice pro tempore), S130157

#05-32 People v. Wilson (William Curtis), S130157. (A101459; 124 Cal.App.4th 38; Superior Court of Solano County; FCR182521.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issue: May a DNA expert testify to a match between the perpetrator’s and defendant’s genetic profiles based on different racial databases if the prosecution has not first provided independent evidence of the perpetrator’s race?

1:30 P.M.

(4) City of Marina et al. v. Board of Trustees, CSU, S117816

#03-128 City of Marina et al. v. Board of Trustees, CSU, S117816. (H023158; 109 Cal.App.4th 1179; Superior Court of Monterey County; M41795, M41781.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issue: When a public agency has proposed and designed a public project, does the agency's exemption from taxation (Cal. Const., art. XIII, § 3) and from special assessments without legislative approval (*San Marcos Water Dist. v. San Marcos Unified School Dist.* (1986) 42 Cal.3d 154) preclude requiring the agency to agree to provide funds to mitigate the environmental impacts that are identified in the environmental impact report prepared for the proposed project?

(5) In re Marriage of Fellows, S127874

#04-135 In re Marriage of Fellows, S127874. (C044636; 121 Cal.App.4th 607; Superior Court of Shasta County; 146580.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case includes the following issue: Does Family Code section 4502(c), which was enacted in 2002 and provides that the defense of laches in an action to enforce a judgment for child support may be asserted only against the portion of the judgment owed the state, apply retroactively?

(6) People v. Demetrulias (Gregory), S046733 [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.

WEDNESDAY, MAY 3, 2006—9:00 A.M.

(7) Dore v. Arnold Worldwide, S124494 (To be called and continued to the late May or June calendar)

#04-77 Dore v. Arnold Worldwide, S124494. (B162235; unpublished opinion; Superior Court of Los Angeles County; BC260637.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case includes the following issue: Is an employment contract that states that "your employment with [the employer] is at will" but also states that "[t]his simply means that [the employer] has the right to terminate your employment at any time" reasonably susceptible of the interpretation either that employment may be terminated at any time *without* cause or that employment may be terminated at any time

but only *with* cause, permitting the introduction of extrinsic evidence on the issue of the proper interpretation of the contract?

(8) Michaelis, Montanari & Johnson v. Superior Court of Los Angeles County (City of Los Angeles, Dept. of Airports et al., Real Parties in Interest), S133464

#05-121 Michaelis, Montanari & Johnson v. Superior Court of Los Angeles County (City of Los Angeles, Dept. of Airports et al., Real Parties in Interest), S133464. (B178884; 127 Cal.App.4th 1298; Superior Court of Los Angeles County; BC090033.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Does the California Public Records Act (Gov. Code, § 6250 et seq.) permit an agency to delay disclosure of bids submitted in response to a Request for Proposals on a public project until it has concluded its negotiations with the successful bidder?

(9) People v. Corpuz (Robert Nicholas) (Baxter, J., not participating; Hollenhorst, J., assigned justice pro tempore), S128884

#04-145 People v. Corpuz (Robert Nicholas), S128884. (F041563; 122 Cal.App.4th 804; Superior Court of Fresno County; SC084193A.) Petition for review after the Court of Appeal reversed in part and modified and affirmed in part a judgment of conviction of criminal offenses. This case presents the following issue: Under the provisions of Penal Code section 646.9(b), which elevates the crime of stalking from a misdemeanor to a felony when a defendant commits the crime of stalking “when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior,” may a defendant be convicted of felony stalking when, at the time of stalking, he is subject to *a condition of probation* requiring him to stay away from the victim, or does the statute apply only when a defendant is subject to a court order in the nature of *a temporary restraining order or an injunction*?

(10) People v. Vasquez (Andrew) et al., S128854

#05-02 People v. Vasquez (Andrew) et al., S128854. (B159379; 122 Cal.App.4th 1027; Superior Court of Los Angeles County; BA200494.) Petition for review after the Court of Appeal affirmed judgments of conviction of a criminal offense. The court limited review to the following issue: Are defendants entitled to reversal on the ground the trial court erred in denying defendant Vasquez’s request to recuse the entire Los Angeles County District Attorney’s Office in light of his allegations that he was being treated more harshly due to his parents’ long-term employment in that office?

1:30 P.M.

(11) People v. Warner (Brian Eric), S126233

#04-100 People v. Warner (Brian Eric), S126233. (C038245; 119 Cal.App.4th 331; Superior Court of Sacramento County; 99F08985.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Does defendant's prior conviction of sexual assault of a child under Nebraska Revised Statutes, section 28-320.01, qualify as a serious felony for sentencing purposes in California although the Nebraska statute does not include all of the elements of any felony under California law amounting to a "lewd and lascivious act on a child under the age of 14 years" within the meaning of Penal Code section 1192.7(c)(6)?

(12) People v. Reed (Vincent), S136345

#05-192 People v. Reed (Vincent), S136345. (A107999; unpublished opinion; Superior Court of San Francisco County; 12303.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Does the accusatory pleading test for determining whether one offense is necessarily included in another apply in deciding whether conviction of two charged offenses is proper?